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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,883	07/11/2003	Chih-Wei Chen	LA-7196-118XX	6811
167	7590	11/28/2006	EXAMINER	
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			CHAVIS, JOHN Q	
			ART UNIT	PAPER NUMBER
			2193	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,883	Applicant(s) CHEN, CHIH-WEI	
	Examiner John Chavis	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gehani et al. (5,765,171). **The previous action is hereby repeated with responses to the applicant's remarks written in bold lettering.**

What is claimed is:

Gehani

1. A network-based server code auto upgrade method for use on a network system linked to a cluster of servers of the same type for upgrading the current version of server code in each of the servers to a new version of server code;

See the title, abstract, and col. 2 lines 19-25.

the network-based server code auto upgrade method comprising: linking via the network system to each of the servers;

See col. 2 lines 33-40.

inspecting the current version of server code installed in each of the servers via the network system;

See col. 2 lines 55-63.

The applicant indicates that Gehani does not teach “inspecting the current version of server code installed in the recipient's servers”. However, indicates that his system verifies if any data item has changed by comparing modification time; Otherwise, the source server examines “each data item” to

determine which of the data items has changed since the last update replication session, col. 2 lines 19-30.

Therefore, the current version is inspected as provided by the applicant in his specifications, in which he indicates that his current version is inspected by inspecting the current version or serial number (sect. 0019 of the applicant's spec.) embedded in the code. Note that Gehani further address this feature in col. 1 lines 52-64, which indicates that pair wise comparison of version information of the corresponding copies of all data items in the source and recipient replicas are used to determine whether update is necessary. Therefore, the current version of server code is inspected as taught by the applicant's claims and specifications.

comparing the current version of server code installed in each of the servers against the version of the new server code;

See col. 3 lines 35-37.

The applicant also indicates that Gehani does not "compare the current version of server code stored in the servers and the new version of server code stored in the upgrade code storage module. However, again see the cited portions above and sects. 0020 and 0026 of the applicant's specifications, which indicates that the version of code is compared. This is the essence of Gehani's system as indicated via fig. 1 items 120, 130, 140 and 150. Also, see fig. 2 items S2, S3 and S4.

in the event that the current version of server code installed in any one of the servers is older than the version of the

See col. 3 lines 38-42. This step is further indication that the age (older) of code is to be checked. Therefore,

new server code, performing a remote upgrade procedure on that server via the network system to replace the current version of server code in that server with the new version of server code...

the features are considered taught by Gehani, as indicated above.

In reference to the user specified time, see col. 2 lines 19-25.

2. The network-based server code auto upgrade method of claim 1, wherein the network system is selected from the group comprising: intranet, extranet, and Internet.

See col. 4 lines 7-13.

Claims 6-7 are rejected as claims 1-2. **Furthermore, in view of the applicants upgrade storage module, see col. 4 lines 19-33 and item 101 of fig. 1.**

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehani in view of the applicant's selective use of descriptive information to describe the server and the type of software being updated.

3. The network-based server code

The applicant merely mention these

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auto upgrade method of claim 1, wherein the servers are selected from the group of types comprising: file servers, data storage servers, email servers, and proxy servers.

items here. It is not clear where this feature is referenced or taught in the specifications. Furthermore, Gehani's servers generic to Maintaining consistency of data items, which would read on any of the servers mentioned above. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to enable replicas to maintain consistency of any type of database; since, all types are subject to updates.

4. The network-based server code auto upgrade method of claim 1, wherein the new version of server code is selected from the group comprising: BIOS, firmware control code, server management programs, embedded operating system, and application programs.

This feature is also merely mentioned here and not clearly defined in the specifications. Therefore, it is considered the applicant is relying on information known in the art at the time of the invention. Furthermore, it is considered the new version is Selected from the items that have been changed and therefore, any data in Gehani's system is considered subject to change and therefore subject to update.

As per claims 8-9, see the rejection of claims 3-4.

Conclusion

5. Applicant's arguments filed 9/19/06 have been fully considered but they are not persuasive, for the reasons indicated above.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-F, 7:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

A handwritten signature in black ink, appearing to read "John Chavis", with a stylized flourish at the end.

John Chavis
Primary Examiner AU-2193